

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

RICHARD ALLEN COPE,

Plaintiff,

v.

CIVIL ACTION NO. 5:05-cv-01175

CHARLES T. FELTS, et al.,

Defendants.

MEMORANDUM OPINION

Pending before the Court is Defendant's Renewed Motion to Dismiss, or in the Alternative, Motion for Summary Judgment filed on February 28, 2008 [Docket 112]. By Standing Order entered on July 21, 2004, and filed in this case on December 23, 2005, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (PF&R). Magistrate Judge VanDervort filed his third PF&R on August 27, 2008 [Docket 120].¹ In that filing, the magistrate judge recommended that the Court dismiss this civil action without prejudice for Plaintiff's failure to prosecute and remove this matter from the Court's docket.

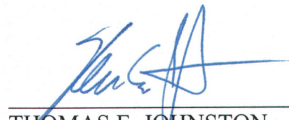
¹ In his first PF&R, dated February 26, 2007 [Docket 62], the magistrate judge recommended denial of Defendants' motion to dismiss, or in the alternative, motion for summary judgment as premature in view of Plaintiff's affidavit filed pursuant to Rule 56(f). The Court adopted that recommendation on March 19, 2007 [Docket 67]. In a second PF&R, dated February 27, 2008 [Docket 110], the magistrate judge recommended Defendant Rowe's motion to dismiss be granted and Plaintiff's motions for temporary restraining order and preliminary injunction and for default judgment be denied. The Court adopted the recommendations in the second PF&R on March 19, 2008 [Docket 116].

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and Plaintiff's right to appeal this Court's Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due by September 15, 2008, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.²

Having reviewed the PF&R filed by Magistrate Judge VanDervort, the Court **ADOPTS** the recommendations contained therein. Accordingly, the Court hereby **DISMISSES** this civil action without prejudice for Plaintiff's failure to prosecute and **REMOVES** this matter from the Court's docket.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record, Plaintiff, *pro se*, and Magistrate Judge VanDervort. A separate Judgment Order will enter this day implementing the rulings contained herein.

ENTER: September 16, 2008



 THOMAS E. JOHNSTON
 UNITED STATES DISTRICT JUDGE

² The Court notes that the magistrate judge directed the clerk to deliver a copy of the PF&R entered on August 27, 2008 [Docket 120] to 6345 North 600 West, Michigan City, Indiana 46350, which is the Plaintiff's current address listed with the Office of Probation. As recognized in the Court's Order adopting the recommendations in the PF&R entered on February 26, 2007 [Docket 110], Plaintiff failed to advise the clerk of his change of address; thus, he violated this Court's local rules. See LR Civ. P. 83.5 ("A *pro se* party must advise the clerk promptly of any changes in name, address, and telephone number.").